

ASSEMBLY BILL

No. 750

Introduced by Assembly Member Bass

February 26, 2009

An act to amend Section 851.90 of, to amend and renumber Section 1000.8 of, and to add Chapter 2.6 (commencing with Section 1000.8) to Title 6 of Part 2 of, the Penal Code, relating to drug diversion.

LEGISLATIVE COUNSEL'S DIGEST

AB 750, as introduced, Bass. Deferred entry of judgment.

Existing law provides that entry of judgment against certain defendants may be deferred with respect to defendants who are charged with certain enumerated crimes and meet certain criteria including that they have no prior convictions for any offense involving controlled substances and have had no prior felony convictions within the 5 years prior, as specified. Existing law provides that if the prosecuting attorney determines that a defendant may qualify for a deferred entry of judgment, the prosecuting attorney must advise the defendant and his or her attorney in writing, as specified. Existing law provides that, upon successful completion of a deferred entry of judgment program, the arrest upon which the judgment was deferred shall be deemed to have never occurred and allows for the sealing of court and arrest records where the interests of justice would be served, as specified. Existing law similarly establishes a preguilty plea drug court program wherein criminal proceedings are suspended without a plea of guilty for designated defendants.

This bill would authorize a superior court, with the concurrence of the prosecuting attorney of the county, to create a deferred entry of judgment reentry program aimed at preventing recidivism among

first-time nonviolent felony drug offenders. The bill would specify the characteristics of that program and the process for eligibility for the program.

The California Constitution requires that a statute, a court rule, or other authority adopted that limits the people's right of access to information, including the writings of public officials and agencies, shall be adopted with findings demonstrating the interest protected by the limitation and the need for protecting that interest.

This bill would make legislative findings that any limitation on the public's right of access to the writings of public officials and agencies made by its provisions is necessary to provide an incentive for program participants to complete the diversion program and to prevent recidivism among nonviolent offenders.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. The Legislature finds and declares all of the
2 following:

3 (a) The San Francisco District Attorney's Office has developed
4 an effective reentry program, Back On Track, that reduces
5 recidivism among first-time, low-level, nonviolent felony drug
6 offenders and costs less than traditional corrections approaches.
7 The three year recidivism rate for Back On Track participants is
8 significantly lower than the 53 percent recidivism rate for the same
9 population in state prison. As a result, the Back On Track program
10 has been selected as a national model. This act is intended to
11 facilitate the replication of this successful program.

12 (b) Successful reentry models combine strict accountability with
13 effective mechanisms for offenders to become self-sufficient and
14 crime free.

15 (c) Successful reentry models include public-private partnerships
16 among law enforcement, government agencies, business and labor
17 associations, private employers, and community-based
18 organizations, formed to connect former offenders with living
19 wage employment opportunities and to take advantage of incentives
20 for hiring former offenders.

21 SEC. 2. Section 851.90 of the Penal Code is amended to read:

1 851.90. (a) (1) Whenever a person is diverted pursuant to a
2 drug diversion program administered by a superior court pursuant
3 to Section 1000.5 or is admitted to a deferred entry of judgment
4 program pursuant to Section 1000 *or* 1000.8, the person
5 successfully completes the program, and it appears to the judge
6 presiding at the hearing where the diverted charges are dismissed
7 that the interests of justice would be served by sealing the records
8 of the arresting agency and related court files and records with
9 respect to the diverted person, the judge may order those records
10 and files to be sealed, including any record of arrest or detention,
11 upon the written or oral motion of any party in the case, or upon
12 the court's own motion, and with notice to all parties in the case.

13 (2) If the order is made, the clerk of the court shall thereafter
14 not allow access to any records concerning the case, including the
15 court file, index, register of actions, or other similar records.

16 (3) If the order is made, the court shall give a copy of the order
17 to the defendant and inform the defendant that he or she may
18 thereafter state that he or she was not arrested for the charge.

19 (4) The defendant may, except as specified in subdivisions (b),
20 (c), and (d), indicate in response to any question concerning the
21 defendant's prior criminal record that the defendant was not
22 arrested or granted statutorily authorized drug diversion or deferred
23 entry of judgment for the offense.

24 (5) Subject to subdivisions (b), (c), and (d), a record pertaining
25 to an arrest resulting in the successful completion of a statutorily
26 authorized drug diversion or deferred entry of judgment program
27 shall not, without the defendant's permission, be used in any way
28 that could result in the denial of any employment, benefit, or
29 certificate.

30 (6) Sealing orders made pursuant to this subdivision shall not
31 be forwarded to the Department of Justice to be included or notated
32 in the department's manual or electronic fingerprint image or
33 criminal history record systems. Any sealing order made pursuant
34 to this subdivision and received by the Department of Justice need
35 not be processed by the department.

36 (b) The defendant shall be advised that, regardless of the
37 defendant's successful completion of a statutorily authorized drug
38 diversion or deferred entry of judgment program, the arrest upon
39 which the case was based shall be disclosed by the Department of
40 Justice in response to any peace officer application request, and

1 that, notwithstanding subdivision (a), this section does not relieve
2 the defendant of the obligation to disclose the arrest in response
3 to any direct question contained in any questionnaire or application
4 for a position as a peace officer, as defined in Section 830.

5 (c) The defendant shall be advised that, regardless of the
6 defendant's successful completion of a statutorily authorized drug
7 diversion or deferred entry of judgment program, the arrest upon
8 which the case was based shall be disclosed by the Department of
9 Justice or the court in which the matter was heard in response to
10 any subsequent inquiry by the district attorney, court, probation
11 department, or counsel for the defendant concerning the defendant's
12 eligibility for any statutorily authorized drug diversion or deferred
13 entry of judgment program in the future.

14 (d) A sealing order made pursuant to this section shall not apply
15 to any record or document received or maintained by the
16 Department of Justice; the court shall advise a defendant that,
17 notwithstanding the issuance of a sealing order pursuant to this
18 section, the Department of Justice shall continue to be able to
19 maintain and disseminate any records or documents received or
20 maintained by the department, as authorized by law.

21 SEC. 3. Section 1000.8 of the Penal Code is amended and
22 renumbered to read:

23 ~~1000.8.~~

24 1000.6. (a) Where a person is participating in a deferred entry
25 of judgment program or a preguilty plea program pursuant to this
26 chapter, the person may also participate in a licensed methadone
27 or levoalphacetylmethadol (LAAM) program if the following
28 conditions are met:

29 (1) The sheriff allows a methadone program to operate in the
30 county jail.

31 (2) The participant allows release of his or her medical records
32 to the court presiding over the participant's preguilty or deferred
33 entry program for the limited purpose of determining whether or
34 not the participant is duly enrolled in the licensed methadone or
35 LAAM program and is in compliance with deferred entry or
36 preguilty plea program rules.

37 (b) If the conditions specified in paragraphs (1) and (2) of
38 subdivision (a) are met, participation in a methadone or LAAM
39 treatment program shall not be the sole reason for exclusion from
40 a deferred entry or preguilty plea program. A methadone or LAAM

1 patient who participates in a preguilty or deferred entry program
2 shall comply with all court program rules.

3 (c) A person who is participating in a deferred entry of judgment
4 program or preguilty plea program pursuant to this chapter who
5 participates in a licensed methadone or LAAM program shall
6 present to the court a declaration from the director of the methadone
7 or LAAM program, or the director's authorized representative,
8 that the person is currently enrolled and in good standing in the
9 program.

10 (d) Urinalysis results that only establish that a person described
11 in this section has ingested or taken the methadone administered
12 or prescribed by a licensed methadone or LAAM program shall
13 not be considered a violation of the terms of the deferred entry of
14 judgment or preguilty plea program under this chapter.

15 (e) Except as provided in subdivisions (a) to (d), inclusive, this
16 section shall not be interpreted to amend any provisions governing
17 deferred entry and diversion programs.

18 SEC. 4. Chapter 2.6 (commencing with Section 1000.8) is
19 added to Title 6 of Part 2 of the Penal Code, to read:

20
21 CHAPTER 2.6. DEFERRED ENTRY OF JUDGMENT REENTRY
22 PROGRAM
23

24 1000.8. A superior court, with the concurrence of the
25 prosecuting attorney of the county, may create a "Back on Track"
26 deferred entry of judgment reentry program aimed at preventing
27 recidivism among first-time nonviolent felony drug offenders. No
28 defendant who has been convicted of a violation of an offense
29 enumerated in subdivision (c) of Section 290 or in Section 1192.7
30 shall be eligible for the program established in this chapter. When
31 creating this program, the prosecuting attorney, together with the
32 presiding judge and a representative of the criminal defense bar
33 selected by the presiding judge of the superior court may agree to
34 establish a "Back on Track" deferred entry of judgment program
35 pursuant to the provisions of this chapter. The agreement shall
36 specify which low-level nonviolent felony drug offenses under the
37 Health and Safety Code will be eligible for the program and a
38 process for selecting participants. The program shall have the
39 following characteristics:

40 (a) A dedicated calendar.

1 (b) Leadership by a superior court judicial officer who is
2 assigned by the presiding judge.

3 (c) Clearly defined eligibility criteria to enter the program and
4 clearly defined criteria for completion of the program.

5 (d) Legal incentives for defendants to successfully complete
6 the program, including dismissal or reduction of criminal charges
7 upon successful completion of the program.

8 (e) Close supervision to hold participants accountable to program
9 compliance, including the use of graduated sanctions and frequent,
10 ongoing appearances before the court regarding participants'
11 program progress and compliance with all program terms and
12 conditions. The court may use available legal mechanisms,
13 including return to custody if necessary, for failure to comply with
14 the supervised plan.

15 (f) Appropriate transitional programming for participants, based
16 on available resources from county and community service
17 providers and other agencies. The transitional programming may
18 include, but is not limited to, any of the following:

19 (1) Vocational training, readiness, and placement.

20 (2) Educational training, including assistance with acquiring a
21 G.E.D. or high school diploma and assistance with admission to
22 college.

23 (3) Substance abuse treatment.

24 (4) Assistance with obtaining identification cards and driver's
25 licenses.

26 (5) Parenting skills training and assistance in becoming
27 compliant with child support obligations.

28 (g) The program may develop a local, public-private partnership
29 between law enforcement, government agencies, private employers,
30 and community-based organizations for the purpose of creating
31 meaningful employment opportunities for participants and to take
32 advantage of incentives for hiring program participants.

33 1000.9. The prosecuting attorney shall determine whether a
34 defendant is eligible for participation in the deferred entry of
35 judgment reentry program.

36 (a) If the prosecuting attorney determines that this section may
37 be applicable to the defendant, he or she shall advise the defendant
38 and his or her attorney in writing of that determination. This
39 notification shall include the following:

1 (1) A full description of the procedures for deferred entry of
2 judgment.

3 (2) A general explanation of the role and authority of the
4 prosecuting attorney, the program, and the court in the process.

5 (3) A clear statement that in lieu of trial, the court may grant
6 deferred entry of judgment with respect to the current crime or
7 crimes charged if the defendant pleads guilty to each charge and
8 waives time for the pronouncement of judgment, and that, upon
9 the defendant's successful completion of the program and the
10 motion of the prosecuting attorney, the court will dismiss the
11 charge or charges against the defendant and the provisions of
12 Sections 851.90 and 1203.4 will apply.

13 (4) A clear statement that failure to comply with any condition
14 under the program may result in the prosecuting attorney or the
15 court making a motion for entry of judgment, whereupon the court
16 will render a finding of guilty to the charge or charges pled, enter
17 judgment, and schedule a sentencing hearing as otherwise provided
18 in this code.

19 (5) An explanation of criminal record retention and disposition
20 resulting from participation in the deferred entry of judgment
21 program and the defendant's rights relative to answering questions
22 about his or her arrest and deferred entry of judgment following
23 successful completion of the program.

24 (b) If the prosecuting attorney determines that the defendant is
25 eligible for the program, the prosecuting attorney shall state for
26 the record the grounds upon which the determination is based and
27 shall make this information available to the defendant and his or
28 her attorney. This procedure is intended to allow the court to set
29 the hearing for deferred entry of judgment at the arraignment.

30 (c) If the prosecuting attorney determines that the defendant is
31 ineligible for the program, the prosecuting attorney shall state for
32 the record the grounds upon which the determination is based and
33 shall make this information available to the defendant and his or
34 her attorney. The sole remedy of a defendant who is found
35 ineligible for deferred entry of judgment is a postconviction appeal.
36 If the prosecuting attorney does not deem the defendant eligible,
37 or the defendant does not consent to participate, the proceedings
38 shall continue as in any other case.

39 (d) Upon a motion by the prosecuting attorney for an entry of
40 judgment, before entering a judgment of guilty, the court may hold

1 a hearing to determine whether the defendant has failed to comply
2 with the program and should be terminated from the program.

3 1000.10. The following provisions apply to this chapter:

4 (a) A defendant's plea of guilty shall not constitute a conviction
5 for any purpose unless a judgment of guilty is entered pursuant to
6 Section 1000.3.

7 (b) Counties that opt to create a deferred entry of judgment
8 reentry program pursuant to Section 1000.8 of the Penal Code
9 shall not seek state reimbursement for costs associated with the
10 implementation, development, or operation of that program.

11 (c) Local law enforcement agencies and counties administering
12 the programs may seek state, federal, or private funding for the
13 purpose of implementing the provisions of this chapter.

14 SEC. 5. The Legislature finds and declares that Sections 2 and
15 4 of this act impose a limitation on the public's right of access to
16 the meetings of public bodies or the writings of public officials
17 and agencies within the meaning of Section 3 of Article I of the
18 California Constitution. Pursuant to that constitutional provision,
19 the Legislature makes the following findings to demonstrate the
20 interest protected by this limitation and the need for protecting
21 that interest:

22 Preventing recidivism among nonviolent offenders improves
23 public safety and reduces long-term corrections costs. Effective
24 reentry programs achieve program compliance among offenders
25 through a combination of swift sanctions and strict accountability,
26 along with incentives such as the possibility of sealing case records
27 upon successful program completion and providing mechanisms
28 for offenders to become self-sufficient and crime-free.